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DETERMINATION AND FINDINGS

**Date: 22 JAN 2007
POC: Lt Williams
Base: GOODFELLOW
Phone DSN: 477-3994**



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Overview

- Definitions/References
- Types of D&F
- Usage
- Authority in Scope
- Content of D&F
- When to use a D&F
- Conclusion



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Definitions Continued

■ DETERMINATION

“The conclusion” or “the decision supported by the findings

■ FINDINGS

Statements of fact or rational essential to support the determination.

Must cover each requirement of the statute or regulation.



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Definitions

- FAR 1.7
- A Special Form Of Written Approval By An Authorized Official That Is Required By Statue Or Regulation As Prerequisite To Taking Certain Contracting Actions.
- Para 1.071: “The “Determination” Is A Conclusion Or Decision Supported By The Findings. The “Findings” Are Statements Of Fact Or Rationale Essential To Support The Determination And Must Cover Each Requirement Of The Statue Or Regulation.”



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Other References

- FAR 6.303
- FAR 17.503
- FAR 45.302-1
- DFAR 245.302-1
- DFAR 247.257-1



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Authority of Scope

- Written approval is a prerequisite for proposed contract action...must be in file.
- Usually for individual contract action but, Class Determinations and Findings (D&F's) may be used in some cases (1.703)
- D&F approval is restricted to certain contract actions (specific to contract)



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Types of D & F

- CLASS – 1.703
 - Provides authority for a class of contracting actions
 - May be for the same or related supplies or services
 - Must have an expiration date
- INDIVIDUAL
 - For a specific contracting action
 - Authority to act expires when it is exercised or expires



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Usage

- The determination and findings (D&F) and the documentation supporting the D&F must identify the source to be excluded from the contract action (DFARS 206.202(B)(ii)).
- Individual action or classes of contract actions
- Reasonable degree of flexibility
- Options



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Content of D & F

Each D&F shall set forth enough facts and circumstances to clearly and convincingly justify the specific determination made. As a minimum each D&F shall include (FAR 1.704):

- Identification of agency, contracting office and document as a D&F
- Nature/description of the action being approved
- Citation of appropriate statute/regulation
- Findings that detail the particular circumstances
- Determination that the action is justified
- Expiration date (if required)
- Signature or authorized official and date



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When to use a D&F

- A D&F can go into a Justification and Approval (J&A) when doing other than full and open competition or any J&A depending on the Contracting Officer [FAR 6.303-2 (7)]
 - Interagency Acquisitions under the Economy Act (FAR 17.503)
 - Providing Facilities (FAR 45.302-1, DFAR 245.302-1)
- Other examples might include Sole source contracts, Options and Modifications.
- Keep in mind that the examples mentioned above do not include all the times one might use a D&F. The examples given here are just common uses for the D&F.



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